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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

FINANCIAL SERVICES VEHICLE
TRUST,

Plaintiff and Respondent,

v.

BOTAVIA ENERGY LLC et al.,

Defendants and Appellants.

B285699

(Los Angeles County
Super. Ct. No. BC599737)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Richard Fruin, Judge. Affirmed.

Gareeb Law Group and Alexander S. Gareeb; Leech
Tishman Fuscaldo & Lampl and Fadi K. Rasheed for Defendants
and Appellants.

Caley & Associates, Rebecca A. Caley and Christopher M.
Domin for Plaintiff and Respondent.

Defendants and appellants Botavia Energy LLC (Botavia) and Sergio Shapiro (Shapiro)¹ appeal from the judgment entered in favor of plaintiff and respondent Financial Services Vehicle Trust, by and through its servicer, BMW Financial Services NA, LLC (BMW or plaintiff), following a bench trial in this action concerning odometer tampering in a leased vehicle. We affirm the judgment.

BACKGROUND

On January 30, 2012, Shapiro returned a 2008 BMW at the end of a three-year lease term. The 2008 BMW had a 36,000 mileage allowance and an odometer reading of 32,517.

Also on January 30, 2012, Botavia leased a 2012 BMW 750i (2012 BMW or the leased vehicle) for a three-year term and a 30,000 mileage allowance. Shapiro personally guaranteed the lease and was the primary driver. At the time he leased the 2012 BMW, Shapiro was also leasing four other vehicles, including a Porsche and a Lamborghini.

Engine damage to the 2012 BMW

On December 8, 2014, two months before the lease term expired, Shapiro's father was driving the 2012 BMW on the freeway when he heard a loud bang and the engine died. Shapiro's mechanic, Pedro Izaguirre, told Shapiro that the engine had to be replaced. The 2012 BMW had not yet been repaired when the lease expired on January 30, 2015.

Shapiro did not inform BMW of any problem with the leased vehicle until February 3, 2015, when he reported that there had been an accident, that a bumper needed to be replaced, and that a repair shop was ordering the parts. Shapiro requested and received three one-month lease extensions while the 2012 BMW was being repaired.

¹ Botavia and Shapiro are referred to collectively as defendants.

Although the lease required genuine manufacturer replacement parts, Shapiro had a used engine installed in the leased vehicle without informing BMW. After mechanic Izaguirre installed the used engine, it immediately began stalling after 60 seconds. Izaguirre could not resolve the engine stalling issue, and Shapiro paid an individual identified only as “Alex” to correct the problem. Shapiro testified that he paid Alex \$3,500 in cash but did not know Alex’s last name, telephone number, contact information, experience, or qualifications to undertake the repairs. Izaguirre testified that he observed Alex sitting in the passenger compartment of the leased vehicle with a laptop computer.

Vehicle return and suspected odometer tampering

Defendants returned the leased vehicle to BMW on April 14, 2015. The odometer at the time of return showed 33,347 miles. Shapiro attested to the accuracy of the mileage to the best of his knowledge and subject to fines or imprisonment for a false statement.

Plaintiff had the leased vehicle transported to the San Francisco Bay area for auction. On May 8, 2015, an auction porter drove the leased vehicle to Weatherford BMW, a local authorized BMW dealership located approximately 22 miles away, to receive warranty updates prior to sale. While the warranty updates were being performed, evidence of odometer tampering was discovered. Ramon Iniguez, a technical service engineer employed by BMW of North America, performed a formal inspection of the 2012 BMW on May 15, 2015. Iniguez’s inspection of the vehicle revealed physical evidence of odometer tampering.

The 2012 BMW had a computer system that included approximately 50 control modules imbedded throughout the vehicle to monitor and record information on vehicle

performance. Although the modules record performance data for different parts of the vehicle, all 50 of them also record mileage information. Vehicle information from these modules are transmitted to and stored in a secure database known as “FASTA” on a server located in Germany.

Vehicle data can be retrieved or transmitted from three different sources. The electronic key used to start the vehicle and to lock and unlock the car door is one source of vehicle information. The vehicle’s imbedded control modules transmit updated information to the key when the vehicle is driven certain distances and at certain speeds. Information stored in the key can be retrieved at a BMW service department by inserting the key into a key reader.

Vehicle data can also be obtained by connecting the vehicle to diagnostic equipment during servicing at an authorized BMW dealership. The diagnostic equipment retrieves the information stored in the vehicle’s imbedded control modules and transmits that information via the internet to the FASTA database.

A third source of information is vehicle self-reporting through a feature known as Teleservice. Teleservice transmits vehicle data through wireless cell phone technology to a server, where it is then relayed to a BMW dealer that can notify the vehicle owner or lessee about service or maintenance needs.

Digital mileage information generated by the 2012 BMW and transmitted and stored on the FASTA database showed that on January 12, 2013, one year into the lease term, the 2012 BMW transmitted an odometer reading of approximately 60,510 kilometers, or 37,600 miles, an amount in excess of the 30,000 mileage allowance for the entire three-year lease term. Nine months later, on September 23, 2013, the 2012 BMW transmitted an odometer reading of 21,294 miles. Thirteen months later, on October 12, 2014, the leased vehicle transmitted an odometer

reading of 61,820 miles. Six months thereafter, on April 14, 2015, when the leased vehicle was returned, its odometer indicated a lease end mileage reading of 33,347 miles.

PROCEDURAL HISTORY

Plaintiff filed this action on October 30, 2015, alleging causes of action against defendants for breach of contract, breach of guaranty, fraud, trespass to chattel, and violations of the Federal Odometer Act. The matter proceeded to a five-day bench trial. At the conclusion of plaintiff's case, defendants made an oral motion for judgment under Code of Civil Procedure section 631.8, which the trial court denied.

At the conclusion of the trial, the trial court ruled in favor of plaintiff on all causes of action. At defendants' request, the court subsequently issued a statement of decision in which it found that defendants had breached the lease agreement by installing a used engine in the 2012 BMW before its return. The court found that Shapiro had prevaricated on whether and when he told BMW he had installed a used engine, and that his testimony was not credible.

The trial court further found that before defendants returned the 2012 BMW, a non-factory foreign device had been installed in the vehicle to roll back the mileage recorded on the vehicle's odometer. The trial court found that plaintiff had proved, through FASTA data collected during the lease term, that the mileage tampering device installed in the leased vehicle had been activated during the lease term. The trial court further found that Shapiro had personal knowledge of and approved the installation and use of the mileage tampering device in the 2012 BMW. The trial court noted that plaintiff had presented evidence of odometer tampering in the 2008 BMW during that vehicle's lease term, and that evidence further supported a finding of defendants' liability for odometer tampering in the 2012 BMW.

The trial court found defendants jointly and severally liable for compensatory damages in the amount of \$22,500 (calculated as \$2,498 for used engine non-disclosure and \$20,002 for odometer alteration) under the causes of action for breach of contract, trespass to chattels, and fraud; punitive damages for fraud in the amount of \$42,500; and treble damages for violation of the federal Odometer Act² in the amount of \$40,004 (calculated by multiplying the \$20,002 in odometer alteration damages by 3, and then subtracting \$20,002 to prevent a double recovery). The trial court also awarded plaintiff \$312,398.50 in attorney fees and \$10,438.40 in costs. This appeal followed.

CONTENTIONS ON APPEAL

Defendants contend (1) the trial court abused its discretion by admitting into evidence unauthenticated computer generated information from the FASTA database; (2) documents generated from the FASTA database were improperly admitted because plaintiff failed to provide certified English language translations of German language terms in those documents, in violation of rule 3.1110(g) of the California Rules of Court; (3) their motion for judgment should have been granted; and (4) factual findings in the trial court's statement of decision are not supported by the evidence.

DISCUSSION

I. Authentication of computer generated information

A. Applicable law and standard of review

A writing, including a printed representation of computer generated information, must be authenticated before it can be admitted into evidence. (Evid. Code, §§ 250, 1401.)

“Authentication is to be determined by the trial court as a

² The federal Odometer Act (49 U.S.C. §§ 32701-32711) allows the recovery of treble damages in civil actions by private persons. (49 U.S.C. § 32710(a).)

preliminary fact [citation] and is statutorily defined as ‘the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is’ or ‘the establishment of such facts by any other means provided by law’ [citation].” (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266 (*Goldsmith*).)

We review the trial court’s evidentiary rulings on authentication under the abuse of discretion standard. (*Goldsmith, supra*, 59 Cal.4th at p. 266.) Under that standard, we will not disturb the trial court’s ruling “except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” [Citation.]” (*Ibid.*)

There is a statutory presumption, under Evidence Code section 1552, that printed representations of computer information are accurate representations of such information. (Evid. Code, § 1552, subd. (a).)³ This statutory presumption “operates to establish only that a computer’s print function has worked properly. The presumption does not operate to establish the accuracy or reliability of the printed information. On that

³ Evidence Code section 1552, subdivision (a) states: “A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.”

threshold issue, upon objection the proponent of the evidence must offer foundational evidence that the computer was operating properly.” (*People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1450.)

As to the type of authentication required for admission of computer records, it is settled law in California that computer systems that automatically record data in real time are presumed to be accurate. (*People v. Rodriguez* (2017) 16 Cal.App.5th 355, 374 (*Rodriguez*).) “No elaborate showing of the accuracy of the recorded data is required.” (*People v. Dawkins* (2014) 230 Cal.App.4th 991, 1003.) A person who generally understands the automated system’s operation and who possesses sufficient knowledge and skill to use the system and explain the resultant data, even if unable to perform every task from initial design and programming to final printout, is a qualified witness for purposes of authentication. (*People v. Lugashi* (1988) 205 Cal.App.3d 632, 640.) Courts in California “have refused to require, as a prerequisite to admission of computer records, testimony on the ‘acceptability, accuracy, maintenance, and reliability of . . . computer hardware and software’” in similar situations. (*People v. Martinez* (2000) 22 Cal.4th 106, 132 [computer generated printout of defendant’s criminal history from CLETS (California Law Enforcement Telecommunications System) properly authenticated by paralegal working in district attorney’s office]; see *Rodriguez, supra*, 16 Cal.App.5th at pp. 359, 374-375 [police officer’s testimony sufficient to authenticate GPS data transmitted by the defendant’s electronic ankle bracelet]; *Goldsmith, supra*, 59 Cal.4th at p. 272 [evidence from automated traffic enforcement system properly authenticated by police department investigator]; *Lugashi*, at p. 642 [computer records of merchant credit card transactions properly authenticated by

bank employee who regularly used computerized system that generated and stored information].)

B. No abuse of discretion

The computer generated information at issue was properly authenticated by the testimony of plaintiff's witnesses. Luis Holguin, a customer support engineer who performs services for BMW of North America, testified extensively about BMW's vehicle computer modules and how they record and transmit vehicle information, including mileage, to the FASTA database. Holguin testified that he has used information from the FASTA database in the past to diagnose and repair BMW vehicles and that the information is accurate. Holguin further testified that he retrieved vehicle information transmitted by the 2012 BMW from the FASTA database by logging into BMW's secure network on his laptop computer and entering his user name, password, and VPN.

Roger Brown, a lead engineer for BMW of North America, also testified about the FASTA database, how vehicle information is transmitted to the database, and how written reports can be generated from the FASTA database. Brown testified that he has a general understanding of how data generated by a BMW vehicle is stored on the FASTA database and the security protocols for the database. Brown further testified that that transmission to and storage of data on the FASTA database is secure. Brown testified that he received training in the use, analysis, and reliability of the FASTA data, and that based on his own experience and the experience of thousands of BMW service technicians who rely on that data, he knows that the data is both accurate and reliable.

The FASTA information was properly authenticated, and the trial court did not abuse its discretion by admitting that information into evidence.

II. English language translation of FASTA documents

We reject defendants' argument that the FASTA documents were improperly admitted into evidence because plaintiff failed to provide certified English language translations of certain German language words contained in those documents, in violation of rule 3.1110(g) of the California Rules of Court. The absence of English language translations was not a violation of rule 3.1110(g), which governs English translation of foreign language documents attached as exhibits to a motion, and does not apply to documents offered in evidence at trial.⁴

For foreign language documents offered in evidence, Evidence Code section 753 requires a translator to be sworn to translate such documents, but only "[w]hen the written characters in a writing offered in evidence are incapable of being deciphered or understood directly." (Evid. Code, § 753, subd. (a).) Here, there was no indication that the witnesses or the trial court were incapable of understanding the information contained in the FASTA documents. The documents admitted into evidence and the testimony concerning those documents involved the analysis of numerical mileage values and did not require the translation of German words.

III. Defendants' motion for judgment

Code of Civil Procedure section 631.8 (section 631.8) authorizes a court to enter judgment in favor of a defendant when, at the completion of the plaintiff's case, it finds that the plaintiff failed to sustain its burden of proof. (*People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes* (2006) 139 Cal.App.4th 1006,

⁴ California Rules of Court, rule 3.1110 governs the general format of motion papers. Subparagraph (g) of that rule states: "Exhibits written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter."

1012.) When ruling on a motion for judgment under section 631.8, a trial court weighs the evidence, including the credibility of any witnesses. (*Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1255.) Review of a trial court's decision denying a motion for judgment under section 631.8 is governed by the same rules that apply on appeal following any other judgment, including the substantial evidence rule. (*Swanson v. Skiff* (1979) 92 Cal.App.3d 805, 810.) Under that standard, an appellate court reviews the record as a whole, resolving all conflicts in the evidence and drawing all reasonable inferences in favor of the prevailing party. (*Cars 4 Causes*, at p. 1012.)

Substantial evidence supports the trial court's ruling denying defendants' motion for judgment.

A. Evidence regarding engine replacement

Shapiro admitted during his trial testimony that a used engine was installed in the 2012 BMW before he returned the vehicle to BMW. Although Shapiro denied knowing at the time that the replacement engine was a used one, he was impeached with his prior deposition testimony in which he admitted knowing that a used engine was to be installed and personally negotiating the price of the engine.

Shapiro's testimony that he informed BMW of the engine replacement before returning the 2012 BMW was contradicted by audio recordings of his telephone calls to BMW in which he requested and obtained lease extensions based on misrepresentations as to the nature and extent of the repairs being undertaken on the 2012 BMW. The trial court was entitled to disbelieve Shapiro's testimony. (*Brenner v. Haley* (1960) 185 Cal.App.2d 183, 187 (*Brenner*).)

B. Evidence of odometer tampering

Plaintiffs presented substantial physical and electronic evidence that the odometer in the 2012 BMW had been rolled back during defendants' lease term.

1. Physical evidence

Plaintiff's expert Iniguez testified that during his May 15, 2015 inspection of the 2012 BMW, he found that an anti-tampering seal installed on the vehicle's Combination Instrument Cluster (KOMBI) had been cut, indicating unauthorized access to the KOMBI, which houses the vehicle's digital odometer. Iniguez observed tool scratches on the compartment where the KOMBI's computer chipboard and odometer reporting chip are located. Iniguez further observed that the area around the odometer chip contained soldering splatter -- a clear sign of tampering. Iniguez explained that in the event of a KOMBI defect or malfunction, the entire unit is replaced, never repaired.

During his inspection Iniguez also observed that a set of electrical wires that transmit data from the KOMBI to the Car Access System (CAS) had been stripped and rewrapped with black electrical tape that was not original manufactured material. Iniguez testified that the CAS unit and the KOMBI share all of the vehicle information, including mileage. Iniguez opened and inspected the leased vehicle's CAS unit, which also has a computer chipboard. Like the KOMBI, the CAS unit's computer chipboard showed evidence of heat damage, including damage to 10 computer pins that transmit and control odometer reporting. The 10 damaged pin points are sites where an illegal device known in the automobile industry as a car access network blocker, or "CAN" blocker, is attached. Iniguez stated that a CAN blocker's sole purpose is to interfere with vehicle odometer reporting.

Plaintiff's expert Holguin testified that the physical evidence supported the presence of a CAN blocker, based on the location of the observed damage to the CAS, KOMBI, and electrical wiring. Holguin explained, with the aid of a demonstrative YouTube video, how a CAN blocker can be attached to the computer pins in a vehicle's CAS unit and how the CAN blocker interferes with the vehicle's odometer recording function.

2. Electronic evidence

Plaintiffs' experts Holguin and Brown testified about electronic mileage information transmitted by the 2012 BMW to the FASTA database and explained how that information showed that the vehicle's odometer had been manipulated during defendants' lease term. Brown also testified about how electronic mileage information transmitted by the 2008 BMW demonstrated that the odometer in that vehicle had also been manipulated during Shapiro's lease term.

Holguin reviewed mileage information that had been transmitted from the 2012 BMW's electronic key and found a significant upward bump in the vehicle mileage recorded on October 12, 2014, but lower mileage readings recorded after that date. Holguin also reviewed mileage readings transmitted by control modules in the 2012 BMW and found several mileage readings that were substantially higher than that recorded by the vehicle's odometer at lease end.

Holguin plotted the mileage information he had reviewed for the 2012 BMW on a graph. The graph revealed that data transmissions from the leased vehicle showed steadily increasing mileage readings until January 12, 2013, when the vehicle transmitted mileage of 60,510 kilometers, but that a substantially lower number of 34,270 was transmitted on September 23, 2013, by the vehicle's electronic key. In November

2014, the leased vehicle transmitted a mileage reading of 99,489,000 kilometers. The recorded mileage decreased to 53,667 kilometers when the vehicle was returned on April 14, 2015. Holguin opined, based on the FASTA data and the physical evidence he reviewed, that the 2012 BMW's odometer reporting system had been tampered with twice during defendants' lease term.

Brown testified that he reviewed all of the relevant FASTA data for the 2012 BMW and that he prepared schematic charts summarizing the vehicle's mileage history. Brown plotted mileage data from the leased vehicle's key, Teleservice transmissions, and imbedded control modules and found discrepancies in the mileage recorded by the computer modules and the vehicle's odometer. These discrepancies, Brown testified, were evidence that the odometer mileage had been rolled back. Brown explained that the control modules obtain vehicle mileage information from the odometer and then store that information in the module. Higher mileage readings in the control modules therefore indicate that the odometer had recorded that same higher mileage reading at the time it was recorded and stored in the control module.

Brown also testified that he downloaded and reviewed FASTA data for the 2008 BMW. Brown compared mileage data recorded during Shapiro's lease term for the 2008 BMW by control modules imbedded in that vehicle with mileage readings on the vehicle's odometer and found significant discrepancies between the two sources. In many instances, mileage recorded by the control modules exceeded that shown on the 2008 BMW's odometer, evidence of odometer tampering.

The record discloses no error in the trial court's denial of defendants' motion for judgment.

IV. Challenges to the statement of decision

Defendants' challenge to the factual findings in the trial court's statement of decision is unsupported by any citations to the record and may be disregarded for that reason. "Contentions based on factual assertions that are not supported by references to the record violate rule 8.204(a)(1)(C) of the California Rules of Court and may be disregarded. [Citation.]" (*In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 344.) Defendants' contentions lack merit in any event.

When a statement of decision sets forth the factual and legal bases for the trial court's decision, all conflicts in the evidence or reasonable inferences to be drawn from the facts will be resolved in favor of the court's decision. (*In re Marriage of Ruelas, supra*, 154 Cal.App.4th at p. 342.) Applying that standard here, there is abundant support in the record for the challenged factual findings.

A. Shapiro's knowledge that a used engine was installed

Substantial evidence supports the trial court's finding that Shapiro testified untruthfully about his lack of knowledge that a used replacement engine had been installed in the 2012 BMW before he returned the vehicle. Shapiro's trial testimony denying such knowledge was impeached by his prior deposition testimony in which he admitted knowing that a used replacement engine was to be installed in the 2012 BMW and that he had personally negotiated its price.

B. Defendants' failure to inform BMW of the engine replacement

The evidence supports the trial court's finding that defendants never informed BMW of the engine replacement in the 2012 BMW. Audio recordings of Shapiro's telephone communications with BMW in which he requested monthly lease

extensions while the engine was being installed show that Shapiro was untruthful not only about the nature of the repairs being undertaken on the leased vehicle, but also when and why those repairs were necessary. Shapiro told BMW that the leased vehicle had been in an accident. In fact, no collision had occurred -- the engine simply stopped functioning. Shapiro told BMW on February 3, 2015, that the accident had occurred only days before, when in fact the engine malfunction had occurred on December 8, 2014. Also on February 3, 2015, Shapiro falsely reported to BMW that an insurance claim had been made and that an adjuster was inspecting the vehicle that day, when in fact he had not yet submitted a claim to his insurance company.

On February 5, 2015, mechanic Izaguirre informed Shapiro that the engine was “blown” and had to be replaced. An insurance adjuster who inspected the leased vehicle that same day confirmed that the engine had to be replaced. The evidence showed that although Shapiro knew, on February 5, 2015, that the engine in the 2012 BMW had to be replaced, he told BMW in a recorded phone call that same day that the vehicle needed a new bumper.

In a third recorded phone call to BMW on March 9, 2015, after the engine had been replaced and the stalling problem arose, Shapiro asked for a third lease extension, explaining that he was awaiting delivery of a “single part,” “some kind of front clip thing.”

The trial court was entitled to disbelieve Shapiro’s testimony. (*Brenner, supra*, 185 Cal.App.2d at p. 187.) The court was also entitled to discount Shapiro’s stated explanation for the inconsistencies between his trial testimony and his recorded telephone conversations with BMW -- that at the time of the phone calls Shapiro was recovering from a dental procedure and was taking medication.

C. Odometer tampering during lease term

Substantial evidence supports the trial court's finding that an odometer tampering device was installed in the 2012 BMW during defendants' lease term. Physical evidence attested to by plaintiff's expert Iniguez established that a CAN blocker, an illegal device whose sole function is to roll back odometer mileage, had been installed in the lease vehicle. This evidence included a breached anti-tampering seal and tool scratch marks on the vehicle's KOMBI, which houses the vehicle's odometer; soldering splatter on the KOMBI's computer chipboard in the area surrounding the odometer reporting chip; heat damage to the vehicle's CAS computer chip board at 10 specific computer "pin points" responsible for reporting odometer readings; and stripped wires connecting the vehicle's CAS and KOMBI units that had been retaped with non-manufacturer issued electrical tape.

Plaintiff's expert Holguin testified that the physical evidence supported the presence of a CAN blocker, based on the location of the observed damage to the CAS, KOMBI, and electrical wiring.

Electronic evidence of inconsistent mileage readings during defendants' lease term further supports the trial court's findings. Plaintiff's experts Holguin and Brown testified that mileage data transmitted wirelessly from control modules imbedded in the 2012 BMW to the FASTA database showed substantially higher mileage readings than the 33,347 odometer reading on the vehicle's CAS and KOMBI units at the conclusion of the lease. Holguin opined that based on the physical evidence and the FASTA data, the odometer in the 2012 BMW had been manipulated twice during defendants' lease term.

Substantial evidence supports the relevant factual findings.

DISPOSITION

The judgment is affirmed. Plaintiff is awarded its costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT